(2)

Supreme Court, U.S.
FILED

02 - 23 JUN 20 2002

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE J. FOXX,

Petitioner,

v.

DEPARTMENT OF THE NAVY, ET AL,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX

GEORGE J. FOXX
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10 pgs

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GEORGE J. FOXX,

Plaintiff,

v. Civil Action No. 99-558-A

RICHARD H. DANZIG, Secretary,
United States Navy,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Reconsideration of this Court's September 28, 1999 Order granted Defendant's present motion and supporting documentation, this Court finds that Plaintiff presents (1) no changes in controlling law, (2) no new evidence or authority, and (3) no errors of law that would persuade the Court to overrule its September 28,1999 Order. Therefore, it is hereby

ORDERED that Plaintiff's Motion for Reconsideration is DENIED.

Plaintiff may appeal this Order pursuant to Title II of the Federal Rules of Appellate Procedure. See, e.g., FED. R. APP. P. 3-4.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 5th day of November, 1999.

/s/_____
Gerald Bruce Lee
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GEORGE J. FOXX,

Plaintiff,

Civil Action No. 99-558-A

RICHARD H. DANZIG, Secretary,
United States Navy,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure (FRCP) 12(b)(6) or, in the alternative, Defendant's Motion for Summary Judgment pursuant to FRCP 56. For the reasons stated below, it is hereby

ORDERED that Defendant's Motion to Dismiss and Defendant's Motion for Summary Judgment are GRANTED.

1. In considering a FRCP 12(b)(6) Motion to Dismiss, the factual allegations in the complaint are presumed to be true, all reasonable inferences are made in favor of the non-moving party, and a count should be dismissed only where it appears beyond a reasonable doubt that recovery would be impossible under any set of facts that could be proven. *See Gasner v. County of Dinwiddle*, 162 F.R.D. 280, 281 (E.D. Va. 1995).

2. The Court should not accept as true, however, allegations that are completely unsupported and conclusory. *See Labram v. Havel*, 43 F.3d 918 (4th Cir. 1995).

3. Under FRCP 56(c), the Court should grant summary judgment if the moving party demonstrates that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. *See* FED. R. Civ. P. 56.

4. Once a motion for summary judgment is properly made and supported, the opposing party had the burden of showing that a genuine dispute exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

5. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for

summary judgment; the requirement is that there is no genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477, U.S. 242, 248 (1986).

6. A party opposing summary judgment may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue. *See id.*

7. As to materiality, only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *See id.*

8. As a precursor to the Court's analysis in granting Defendant's motions, the Court wishes to acknowledge, with admiration, the amount of time, energy, and effort that Plaintiff has expended, as a *pro se* litigant, in pursuing past and present claims emanating from his employment with the Department of the Navy. Nonetheless, the Court must decide the aforementioned motions on the facts and law, as presented in the record.

9. Count I of the present complaint was dismissed by the United States District Court for the Middle District of Florida. *See Foxx v. Dalton*, 46 F. Supp.2d 1268 (M.D. Fla. 1999).

10. Counts II through V of Plaintiff's present complaint are, in essence, criticisms, by Plaintiff, of the process by which his complaint alleging new evidence was addressed by the agency office or the Equal Employment Opportunity Commission (EEOC) itself.

11. Allegations of mishandling of an agency employee's complaint by an agency or the EEOC do not create a cause of action under Title VII or any other federal statute. *See Adams v. United States EEOC,* 932 F. Supp. 660, 664-65 (E.D. Pa. 1996).

12. The availability of an adequate remedy at law, namely a Title VII lawsuit, preclude judicial review of agency decisions or decisions of the EEOC. *See Washington Legal Foundation v. Alexander,* 984 F.2d 483, 486 (D.C. Cir. 1993).

13. Furthermore, based on the record, it appears that Plaintiff did indeed receive a prior and full investigation of his allegation that "new evidence" supports his claim of racial discrimination.

14. Regarding Count VI, the Fourth Circuit Court of Appeals, in 1993, settled the issue of racial discrimination inherent in Plaintiff's

allegations. *See Foxx v. Garrett*, No. 92-2276, 1993 WL 336095, at *1 (4th Cir. 1993). Thus, the substance of the allegedly "new" claim is the same as Plaintiff's adjudicated 1990 claim.

15. Under the doctrine of res judicata, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. *See Cromwell v County of Sac*, 94 U.S. 351, 352 (1876). The doctrine requires three essential elements: (1) a final judgment on the merits in an earlier suit; (2) identity of the cause of action in both the earlier and the later suit; and (3) identity of the parties or their privies in the two suits. *See Nash County Bd. Of Education v. Biltmore Co.*, 640 F.2d 484, 486 (4th Cir. 1981).

16. Additionally, res judicata prevents parties from relitigating issues that were raised or could have been raised in previous litigation. *See Federated Dept. Stores v. Moitie*, 452 U.S. 394, 398 (1981).
17. Since the 1990 claim involved a judgment on the merits, essentially the same cause of action, and identical parties, res judicata bars the adjudication of Count VI. *See Nash City*

Bd. Of Education, 640 F.2d at 486; *see also Foxx v. Garrett*, No. 92-2276, 1993 WL 336095, at *1 (4th Cir. 1993). For the reasons stated above, Defendant's Motion to Dismiss and Motion for Summary Judgment are granted. The complaint is hereby dismissed with prejudice.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 28th day of September, 1999.

/s/
Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
9/27/99